

**United States Department of Labor
Employees' Compensation Appeals Board**

D.L., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, OK, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-2107
Issued: February 20, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 7, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 9, 2007 which denied his claim for bilateral hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant sustained bilateral hearing loss in the performance of duty.

FACTUAL HISTORY

On January 9, 2007 appellant, then a 60-year-old retired machine tool operator filed an occupational disease claim alleging that he sustained bilateral hearing loss while working with

¹ The record includes evidence received after the Office issued the March 9, 2007 decision. The Board cannot consider new evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2004).

hydraulic machines, drill presses, grinders, and internal and external lathes in the performance of duty.

On January 19, 2007 appellant submitted an occupational noise exposure summary identifying his periods of exposure, the source of the noise, his duties during noise exposure, type of hearing protection used and the length of exposure while equipment was being used. He indicated that he worked as a machine tool operator grinding and drilling metal parts with a noise level from tools above 87 decibels for five to six hours a day five days a week; that he had also worked with internal grinders and pneumatic drills. Appellant noted that he wore earplugs at work. He indicated that he retired from this employment on October 30, 2006. Appellant also stated that he first became aware of his hearing loss in June 1984. On January 19, 2007 the Office also received the two occupational health examination workplace exposure summaries which stated that his position required that he perform machine work on F-100 turbo fan engine components with noise exposure identified as 87 and 85 to 93 decibels which was controlled with earplugs. On March 22, 2006 an audiological evaluation was performed by Virginia L. Hays, an audiologist, using equipment that had been calibrated in January 2006. The evaluation found that appellant had a hearing loss. Other hearing test results performed during his employment were also submitted.

In a January 22, 2007 letter, the Office requested additional information from appellant. The Office also requested information from his employing establishment. The employing establishment stated that appellant worked an eight-hour day Monday through Friday, wore protective earplugs and the date of last exposure was October 30, 2006. The employing establishment also submitted a standard core personnel document that identified his duties of operating machine tools such as lathes, boring mills, milling machines, grinding machines, planner, shapers or radial drills.

In a March 9, 2007 decision, the Office denied appellant's claim for an injury on the grounds that the evidence was insufficient to establish that the events occurred as alleged. The Office noted that he had not submitted information regarding the source of his noise exposure, the number of hours exposed, or the use of any safety device.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

² *Anthony P. Silva*, 55 ECAB 179 (2003).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the factors identified by the claimant.³

ANALYSIS

The Board finds that appellant has established that the alleged factors of employment occurred. He was a machine tool operator from June 1984 through October 31, 2006. As part of appellant's job requirements he worked with hydraulic machines, drill presses, grinders, lathes and F-100 turbo fan engine components. He wore earplugs to control the noise exposure. Appellant also stated that he was exposed to noise for up to five to six hours a day, five days a week and that he first became aware of his hearing loss in June 1984. The employing establishment confirmed that he operated machine tools as part of his position. While the Office denied appellant's claim on the grounds that he had not submitted evidence regarding the source of noise exposure, length of exposure, or use of safety devices, the Board finds that he has submitted sufficient evidence, confirmed by the employing establishment, that he was exposed to hazardous noise during his federal employment.

The Board also finds that there is medical evidence establishing the presence of a hearing loss in the record. The March 22, 2006 audiological evaluation revealed that appellant had a significant hearing loss. As the Office has not evaluated the medical evidence of record the case will be remanded for further review of the evidence as necessary. Following such further development, the Office should issue a *de novo* decision regarding the occupational disease claim.

CONCLUSION

The Board will remand the case for further development of the medical evidence.

³ Elizabeth H. Kramm (*Leonard O. Kramm*), 57 ECAB ____ (Docket No. 05-715, issued October 6, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 9, 2007 is set aside and the case is remanded to the Office for further development consistent with this decision of the Board.

Issued: February 20, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board